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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/615,627	07/09/2003	Wayne A. Damrau	CPI 40043H	1469

7590

12/09/2005

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EXAMINER

BAREFORD, KATHERINE A

ART UNIT	PAPER NUMBER
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1762

DATE MAILED: 12/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/615,627	Applicant(s) DAMRAU, WAYNE A.	
	Examiner Katherine A. Bareford	Art Unit 1762	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 November 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☒ Applicant's reply has overcome the following rejection(s): see attached pages.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____
 Claim(s) objected to: 68,74,78,85,91,102,105,112,118,123 and 125.
 Claim(s) rejected: 64-67,69-73,75-77,79-84,86-90,92-101,103,104,106-109,111,113-117,119-122,124 and 126.
 Claim(s) withdrawn from consideration: 1-63.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached pages.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
 13. ☐ Other: _____.

Advisory Action

1. Continuation of Box 5 of PTOL-303 (Advisory Action):

Applicant's reply has overcome the following rejections only (1) the objection to claim 110 described in paragraph 7 of the Final Rejection, (2) the 35 USC 112 rejection of claims 68, 74, 78, 85, 91, 102, 105, 112, 118, 123, 125 described in paragraph 9 of the Final Rejection and (3) the 35 USC 112 rejection of claim 75 described in paragraph 11 of the Final Rejection.

However, as discussed in paragraph 3 below, the outstanding obvious double patenting rejections and the outstanding 35 USC 102 rejection of claims 64-66, 75, 76 and 80 are maintained.

2. Continuation of Box 7 of PTOL-303 (Advisory Action)

Due to the removal of the 35 USC 112 rejection of claims 68, 74, 78, 85, 91, 102, 105, 112, 118, 123, 125:

Claims 68, 74, 78, 85, 91, 102, 105, 112, 118, 123, 125 are now objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

3. Continuation of Box 11 of PTOL-303 (Advisory Action):

the request for reconsideration has been considered but does not place the application in condition for allowance, because:

(1) As to the filing of the Terminal Disclaimer of Nov. 28, 2005:

It is directed to a particular claim or claims, which is not acceptable, since "the disclaimer must be of a terminal portion of the term of the entire [patent or] patent to be granted." See MPEP § 1490.

As a result the Terminal Disclaimer is not accepted and the obvious double patenting rejection over U.S. Patent No. 5,436,030 is maintained (see paragraph 3 of the Final Rejection). Moreover, no terminal disclaimer was provided for as to U.S. Patent No.'s 5,789,023 and 6,319,552 (paragraphs 4 and 5 of the Final Rejection), nor were any arguments provided against the obvious double patenting rejection. Therefore, the obvious double patenting rejection of over U.S. Patent No.'s 5,789,023 and 6,319,552 is maintained.

(2) As to the 35 USC 102 rejection of claims 64-66, 75, 76 and 80, the Examiner has reviewed applicant's arguments, however, the Final Rejection is maintained. First, the Examiner maintains the reasons given in the Advisory Action of October 28, 2005. Furthermore, as to applicant's further arguments in the November 28, 2005 after final amendment, the Examiner notes applicant's arguments that under pressure would mean greater than atmospheric. However, while the Examiner notes applicant's argument that the flow upwardly as shown in figure 4 would need a pressure greater than atmospheric to propel it to the curved surface, the Examiner notes that the application and claims do not require that the device be placed so that flow is upward

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to the curved surface. Moreover, as to the pressure flow to initial chamber 66, etc., the Examiner notes that Isayama also shows pressure flow to the initial chambers through pumps P1 and P2.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Katherine A. Bareford whose telephone number is (571) 272-1413. The examiner can normally be reached on M-F(6:00-3:30) with the First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Meeks can be reached on (571) 272-1423. The fax phone numbers for the organization where this application or proceeding is assigned are (571) 273-8300 for regular communications and for After Final communications.

Other inquiries can be directed to the Tech Center 1700 telephone number at (571) 272-1700.

Furthermore, information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


KATHERINE BAREFORD
PRIMARY EXAMINER